

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Karen Robinson and Steve Jevning,

Complainants,

vs.

Elizabeth Glidden, Volunteers for Elizabeth
Glidden,

Respondents.

**FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER**

The above-entitled matter came on for an evidentiary hearing on November 10, 2005, before a panel of three Administrative Law Judges: Kathleen D. Sheehy (Presiding Judge), Steve M. Mihalchick, and Barbara L. Neilson. The hearing record closed at the conclusion of the hearing that day.

Steve Jevning (Complainant), 3856 Pleasant Avenue South, Minneapolis, MN 55409, participated on his own behalf. Karen Robinson did not appear.

Elizabeth Glidden, Hedin & Glidden, P.A., 250 Tallmadge Building, 1219 Marquette Avenue South, Minneapolis, MN 55403, appeared on her own behalf and for Volunteers for Elizabeth Glidden (Respondents).

NOTICE

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

STATEMENT OF ISSUES

Did Respondents violate Minn. Stat. § 211B.02 by knowingly making, directly or indirectly, a false claim stating or implying Elizabeth Glidden has the support or endorsement of a major political party?

The panel concludes the Respondents did not violate Minn. Stat. § 211B.02, and therefore the Complaint against them is dismissed.

Based upon the entire record, the panel makes the following:

FINDINGS OF FACT

1. Elizabeth Glidden was a first-time candidate for election to the Eighth Ward City Council seat. The complainant, Steve Jevning, was a member of the campaign committee of Marie Hauser, Glidden's opponent in the general election. Jevning has identified himself as the manager of Hauser's campaign, and he was also on a subcommittee that developed campaign material.^[1]

2. Glidden and Hauser both sought endorsement of the DFL party, along with four other candidates. At the Eighth Ward DFL endorsing convention in April or May 2005, no candidate received DFL endorsement for the Eighth Ward City Council seat because no candidate received the votes of 60% of the convention delegates.^[2]

3. The DFL endorsement means a great deal in Minneapolis and is considered to be an important tool in winning elections.^[3]

4. After the DFL endorsing convention, another four candidates filed for election, bringing the total to ten candidates for this seat.^[4]

5. In July 2005, when she officially filed as a candidate for the election, Glidden received from the City Elections Office a packet of materials that contained the applicable statutes governing election campaigns. The packet included only the statutory language and did not include summaries or annotations of case law interpreting the statutes. The packet provided no direction for how candidates should describe their party affiliation.^[5]

6. Glidden printed her first campaign brochure in mid-June 2005. The brochure contained photographs of herself along with the words "ELIZABETH GLIDDEN (DFL) FOR EIGHTH WARD CITY COUNCIL" on the front. The initials (DFL) are in a smaller font size than her name or the rest of the phrase. The back of the brochure contained information about Glidden's endorsements by various organizations and persons, as well as information about groups that supported her or gave her acceptable ratings.^[6] Glidden did not list the DFL as one of her endorsements. This brochure was duplicated, translated into other languages, and used as a link on Glidden's website. About 4,000 to 5,000 copies of the brochure were printed, and it was distributed by volunteers who door-knocked at the homes of targeted voters in the Eighth Ward who regularly vote in City Council elections.^[7]

7. Antonia Hauser, the communications coordinator for Marie Hauser's campaign committee, routinely reviewed Ms. Glidden's website and the campaign material linked to that website throughout the campaign, starting shortly before the Eighth Ward DFL Endorsing Convention.^[8]

8. On or about August 1, 2005, Glidden distributed lawn signs to her supporters. The lawn signs contained no reference to Glidden's party affiliation.^[9]

9. Glidden printed a second campaign brochure in late August 2005. It is similar to the first brochure in that it contains a photograph of Glidden with the Words “ELIZABETH GLIDDEN (DFL) for Eighth Ward City Council.” The initials “DFL” are again in a smaller font size than her name or the rest of the phrase. On this brochure, the information concerning organizations that endorsed or supported Glidden or gave her acceptable ratings is on the front of the brochure. The DFL party is not listed as one of her endorsements.^[10] About 3,500 copies of this brochure were printed, and it was used in a literature drop at the homes of targeted voters in the Eighth Ward who regularly vote in City Council elections.^[11]

10. Two other candidates running for the Eighth Ward City Council seat (Jeff Hayden and Dennis Tifft) used the initials “DFL” on literature and lawn signs distributed before the primary election.^[12]

11. Jevning was aware of Glidden’s use of the initials “DFL” in her literature before the primary election held on September 13, 2005. Neither he nor anyone else affiliated with the Hauser campaign contacted Glidden to object to the designation or ask for any corrective action.^[13]

12. At some point after the second campaign brochure was printed, but before the primary election, Glidden became aware of a controversy concerning the use of the initials “DFL” by unendorsed candidates.^[14] As a result, the Respondents decided to put “DFLer” on any additional literature they printed. In her third piece of campaign literature, the brochure was reprinted in essentially the same format but contained the words “ELIZABETH GLIDDEN (DFLer) FOR EIGHTH WARD CITY COUNCIL” on the front. Her endorsements and list of supporting organizations are printed right next to her name on the front of the brochure.^[15] Glidden volunteers used this brochure in a literature drop to the targeted voter list before the primary.^[16]

13. The primary election was held on September 13, 2005. Glidden and Hauser came in first and second in the primary, respectively, making them eligible to run in the general election.^[17]

14. After the primary, Glidden’s campaign continued to use up the leftover second and third brochures produced before the primary by putting stickers that said “Vote November 8th” over a section on the old brochures that said “Vote in the Primary Election on September 13.”^[18]

15. On October 4, 2005, the DFL Executive Committee mailed a Minneapolis DFL 2005 Campaign Notice to all DFL candidates regarding the use of the initials “DFL” on literature, lawn signs or websites. The Executive Committee notice informed candidates that use of the initials “DFL” was not permitted except by a DFL-endorsed candidate, but clarified that candidates could identify themselves as a “DFL member” or “DFL’er” in campaign materials. The Committee requested that the candidates ensure that any future campaign

materials were printed in compliance with these requirements.^[19] Glidden received this notice shortly after the mailing date.^[20]

16. Glidden received her fourth campaign brochure from the printer on or about October 11, 2005. The new brochure identified her as a “DFLer” in a manner similar to the third brochure, and it contained a list of her endorsements and supporters on the back. It did not list the DFL as an endorsement.^[21] Upon receipt of the fourth brochure from the printer, Glidden’s campaign discontinued use of all the old literature.^[22]

17. In mid-October, Glidden’s campaign printed stickers to attach to her lawn signs that identified her as a “DFLer.” The stickers were attached to some but not all of her lawn signs. The remainder of the signs made no reference to Glidden’s party affiliation.^[23]

18. During October 13-16, 2005, Glidden’s campaign did a literature drop to every household in the entire Eighth Ward. The brochures used in the literature drop identified her as a “DFLer.”^[24]

19. During the week of October 24, 2005, Glidden direct-mailed a brochure in the ward that was similar to the second brochure except that it had minor text changes and it identified her as a “DFLer.”^[25]

20. On October 25, 2005, the *Minneapolis Star Tribune* published an editorial endorsing Glidden for the Eighth Ward City Council seat. One of the reasons given in the editorial for endorsing Glidden over Hauser was Hauser’s use of misleading campaign material, in which Hauser “seemed to claim support from Park Board candidates who did not endorse her.”^[26]

21. On October 26, 2005, Hauser’s campaign filed this complaint against Glidden, alleging that Glidden’s campaign brochures and website falsely claimed the support or endorsement of the DFL party.^[27]

22. Glidden became aware of the allegations in the complaint on October 26, 2005. This was the first notice Glidden received that the Hauser campaign had any objection to her campaign materials. She had not realized that the old campaign brochures referencing the initials “DFL” were still available through links on her website and she immediately directed her campaign manager to ensure that the links were blocked. By that evening, the links on the website were blocked, and by the next day they were removed entirely.^[28]

23. On November 1, 2005, Administrative Law Judge Kathleen Sheehy determined that there was probable cause to believe that Glidden’s use of the initials “DFL” constituted a violation of Minn. Stat. § 211B.02.

24. The weekend before the general election, the Hauser campaign distributed campaign literature comparing Hauser and Glidden as candidates. Under a heading called “Controversy,” Hauser described the controversy regarding her own campaign material as “Distributed campaign literature supporting three labor-endorsed DFL candidates for park board.” Under Glidden’s name, the controversy was described as “Used initials ‘DFL’ in campaign material although not endorsed by DFL party.”^[29]

25. The same weekend, Glidden’s campaign did a literature drop in the entire ward, using a new brochure that identified her as a “DFLer” and identified her endorsements and supporters. With the new brochure, Glidden distributed a piece reprinting, with the permission of the *Star Tribune*, the entirety of the editorial endorsement.^[30]

26. A day or so before the general election, Hauser’s campaign distributed a piece of literature in the second, sixth, seventh, eighth, and ninth precincts of the Eighth Ward entitled “Consider this.” The piece states that “Marie’s opponents twice used the courts to smear her, claiming she produced misleading literature. Each claim has been dismissed.”^[31] Hauser’s opponents did not file any complaints against her; rather, the complaints were filed by Mary Merrill Anderson, a candidate for the Minneapolis Park and Recreation Board. The first complaint was dismissed on the basis that although Hauser’s campaign material implied support by the Park Board candidates, a false implication of support by an individual is insufficient to constitute a violation of Minn. Stat. § 21B.02. The second complaint was dismissed after an evidentiary hearing in which it was found that no false statement had been made.^[32]

27. The Hauser literature also stated that “Glidden continues to distribute a Star Tribune editorial that refers to the alleged ‘misleading’ literature even though the court dismissed the matter. Meanwhile, candidate Glidden is the subject of a serious unfair campaign practice complaint in which: The judge found that there is probable cause to believe that Glidden used the initials “DFL” next to her name to suggest the endorsement or support of the DFL party in violation of Minn. Stat. 211B.02. This matter has been assigned to a panel of three administrative law judges for a hearing on November 10.”^[33]

28. Glidden defeated Hauser in the general election on November 8, 2005, by a wide margin.^[34]

29. There is no evidence that anyone was misled by Respondents’ use of the initials “DFL” in her early campaign material or that the use of the initials in the material had any impact on the primary or general elections.

Based upon the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS

1. Minn. Stat. § 211B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. Minn. Stat. § 211B.02 provides in relevant part that “A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization.”

3. The Respondents did not knowingly make a false claim stating or implying that Elizabeth Glidden had the support or endorsement of the DFL party.

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

ORDER

IT IS ORDERED that the Complaint in this matter is DISMISSED.

Dated: November 16, 2005

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Presiding Administrative Law Judge

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

Ms. Glidden prepared and disseminated campaign literature in which the initials “DFL” appear near her name. Minn. Stat. § 211B.02 provides that a person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate has the support or endorsement of a major political party. There are three Minnesota Supreme Court cases that address the issue of candidates not endorsed by the DFL Party using the initials “DFL” on campaign material.

In *Schmitt v. McLaughlin*,^[35] the Minnesota Supreme Court held that a candidate’s use of the initials “DFL” would imply to the average voter that the candidate had the endorsement, or, at the very least, the support of the DFL party. The court explained that candidates have a right to inform voters of their party affiliation “by the use of such words as ‘member of’ or ‘affiliated with’ in conjunction with the initials ‘DFL.’”^[36]

In *Matter of Ryan*,^[37] a non-endorsed candidate for County Commissioner distributed campaign brochures and lawn signs with the initials “DFL” and the words “LABOR ENDORSED” in large capital block letters. Between “DFL” and “LABOR ENDORSED,” in small lettering, was the phrase “47 ‘District 5’ Secretary” or “47 ‘Secretary Sen. Dist.’” which referred to a DFL party office the candidate held in the 47th Senate District. The candidate argued that the use of his party office on the campaign material was intended to modify “DFL” as an indication of party affiliation and not endorsement. The candidate insisted that he did not intend to violate the statute and that he made a conscious attempt to comply with the law.

The Court rejected the candidate’s argument that the party office modified “DFL” and found that the use of the initials “DFL” without the modifying language authorized in *Schmitt* implied party endorsement. However, in determining whether the candidate’s false implication of party support was made knowingly, the Court declined to interpret “knowingly” to mean “deliberate.” Instead, the Court held that the candidate may be said to have “knowingly” violated the statute “if he knew that his literature falsely claimed or implied that he had party support or endorsement.”^[38] In order to make this determination, the Court explained that the candidate’s testimony had to be examined together with the circumstances surrounding the preparation of the campaign material. The Court noted that the candidate was an experienced party regular who had run in a number of elections. Most important, according to the Court, was the candidate’s acknowledged familiarity with both the statute and the *Schmitt* case. Based on all of this, the Court held that by not using the precise modifying language authorized by the *Schmitt* court, the candidate consciously took the risk that his interpretation of the law was not correct.^[39]

Finally, in *Daugherty v. Hilary*,^[40] a candidate for alderman for the Third Ward of Minneapolis distributed “Official Sample Ballots,” which the Court found falsely implied that the candidate was endorsed by the DFL party. The Court

noted that the words “Official Sample Ballot” were strikingly similar to the traditional title of the DFL sample ballot. In addition, the title was followed by the phrase “Vote for these DFL’ers.” The Court concluded that when taken as a whole, the candidate’s sample ballot was a thinly disguised attempt to directly imply that the document was the DFL sample ballot, thus falsely implying the candidate was the DFL endorsed candidate. The candidate’s campaign manager admitted that she was vaguely aware of the *Schmitt* and *Ryan* cases, but chose to rely on the Secretary of State’s Campaign Manual, which provides minimal annotation to the Fair Campaign Practices Act, without reviewing recent judicial applications of the statute. Hilary reviewed the 1982 Official DFL Sample Ballot in an attempt to create “visual dissimilarities” between her ballot and the traditional DFL ballot. The Court concluded from this testimony that the candidate “consciously undertook to derive as much benefit as possible from the voter’s familiarity with party sample ballots short of an outright claim of endorsement.” Thus, the Court found the candidate’s violation was committed knowingly.

Unlike the candidates in *Ryan* and *Daugherty*, Glidden is a first-time candidate who was unfamiliar with the *Schmitt* case until after this campaign complaint was filed. And unlike *Daugherty*, Ms. Glidden’s campaign material cannot be viewed as a “thinly disguised attempt” to imply DFL endorsement. Rather, Ms. Glidden and her campaign staff specifically and accurately listed her endorsements on all of her brochures. Once Ms. Glidden was made aware by the DFL Executive Committee that use of the initials “DFL” was not permitted, she identified herself as a “DFLer” on campaign literature and lawn signs and discontinued use of the old campaign material.

In addition, this case can be distinguished from the recent decision in *Stone v. Kummer*.^[41] Unlike the candidate in *Kummer*, neither Ms. Glidden nor any member of her campaign committee was made aware prior to October 4, 2005, that the use of the initials “DFL” by an unendorsed candidate is not permitted. In *Kummer*, a candidate for the Minneapolis Park and Recreation Board who was not endorsed by the DFL prepared and disseminated campaign brochures and lawn signs with the initials “DFL” and the phrase “Labor Endorsed.” The evidence established that Ms. Kummer and her campaign committee staff were informed by her opponent and others as early as August 20, 2005, that her use of the initials “DFL” was not permitted. In fact, by that date the holding in the *Schmitt* case had been appended to an email to Ms. Kummer’s campaign co-chair. Despite this knowledge, however, the candidate continued to distribute campaign literature and lawn signs with the initials “DFL.”

Moreover, unlike the situation in the *Kummer* case, where the initials “DFL” were placed on lawn signs without any clarifying information, Ms. Glidden’s use of “DFL” was confined to brochures that also contained endorsement information that made it clear that the DFL party was not among the organizations that endorsed her.^[42]

After examining the testimony and the circumstances surrounding the preparation of the campaign material, the panel concludes that Respondents’

implication of party support by use of the initials DFL on campaign literature was not made knowingly and did not violate Minn. Stat. § 211B.02. Unlike the other cases discussed above, it cannot be said here that Respondents knew their campaign material may have implied falsely that Glidden had party endorsement and that they consciously took the risk and distributed the material despite this knowledge. Accordingly, the Complaint is dismissed.

K.D.S. S.M.M. B.L.N.

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- [1] Testimony of Elizabeth Glidden; Testimony of Steve Jevning.
[2] Testimony of Elizabeth Glidden.
[3] Testimony of Jevning.
[4] *Id.*
[5] Ex. 7; Testimony of Glidden.
[6] Ex. 1; Ex. 4 at 3 (same piece). Exhibit 1 contains a sticker added after the primary, which says "Vote November 8th."
[7] Testimony of Elizabeth Glidden. There are 2,000 to 3,000 names on this list.
[8] Testimony of Antonia Hauser.
[9] *Id.*
[10] Ex. 4 at 5.
[11] Testimony of Elizabeth Glidden.
[12] *Id.* The mayoral candidates in Minneapolis, Peter McLaughlin and R.T. Rybak, also used the initials "DFL" on their lawn signs and in campaign literature. *Id.*
[13] Testimony of Steve Jevning.
[14] Testimony of Elizabeth Glidden.
[15] Ex. C.
[16] Testimony of Elizabeth Glidden.
[17] Testimony of Glidden.
[18] Ex. 4 at 3-4 (containing reference to DFL); Ex. C (referring to her as "DFLer").
[19] Exs. 5 & 6.
[20] Testimony of Elizabeth Glidden.
[21] Ex. D.
[22] Testimony of Elizabeth Glidden.
[23] Ex. E; Testimony of Elizabeth Glidden.
[24] Testimony of Elizabeth Glidden.
[25] Testimony of Elizabeth Glidden.
[26] Ex. G. *See also Anderson v. Hauser*, OAH No. 6326-16886, Findings of Fact, Conclusions, and Order dated November 4, 2005, concluding that the material did not constitute a knowingly false statement.
[27] Complaint filed October 26, 2005.
[28] Testimony of Elizabeth Glidden.
[29] Ex. B.
[30] Exs. F & G.
[31] Ex. A.
[32] *Anderson v. Hauser for 8th Ward Volunteer Committee*, OAH No. 11-6326-16855, Order of Dismissal dated September 20, 2005; *Anderson v. Hauser for 8th Ward Volunteer Committee*, OAH No. 15-6326-16886, Findings of Fact, Conclusions, and Order dated November 4, 2005.
[33] *Id.*
[34] The Official Canvass Report for the City of Minneapolis reflects that Glidden received 58.73 % of the vote, while Hauser received 40.51% of the vote.
[35] 275 N.W.2d 587.
[36] 275 N.W.2d at 591.

^[37] 303 N.W.2d 462 (Minn. 1981).

^[38] 303 N.W.2d at 467.

^[39] 303 N.W.2d at 468. (Minn. Stat. § 210A.02 is the predecessor to Minn. Stat. § 211B.02.)

^[40] 344 N.W.2d 826 (Minn. 1984).

^[41] OAH File No. 3-6326-16853-CV (Findings, Conclusions and Order, October 13, 2005.)

^[42] The lawn signs initially distributed by the Respondents contained no reference to party affiliation. Some of the signs were later modified by affixing a sticker that said “DFLer.”